of OCBC through its servants or agents. I am of the view that they are proper interrogatories.

(c) Direction for hearing.

A direction that the 1988 proceedings be listed for hearing before the same judge hearing the 1987 proceedings and be heard immediately after the 1987 proceedings by consent of both counsel was not pursued for the time being.

*Conclusion*

For the reasons I have given in this judgment I will allow the second defendants' (OCBC's) appeal and set aside the assistant registrar's order for discovery made on 4 October 1989.

I disallow the plaintiff's (Norman Wright's) application for better further and better particulars of para 7 of the second defendants' (OCBC) defence.

I allow interrogatories (4) and (5) to be delivered for answer by the second defendants (OCBC) through any of its officers or directors.

Finally I award the costs of the appeal to the second defendants (OCBC). There will be no order for costs on the application for further and better particulars and on the interrogatories.

*Appeal allowed.*

Solicitors: *Shook Lin & Bok; Arthur Loke and Partners.*

Reported by *Rosalind Tan*

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## Glory Realty Co Pte Ltd v Datuk Wong Chik Lim

HIGH COURT (SINGAPORE) — ORIGINATING SUMMONS NO 636 OF 1989
LAI KEW CHAI J
10 NOVEMBER 1990

*Land Law — Agreement for sale and purchase of property — Deposit paid by purchaser to purchaser's solicitors as stakeholders — Purchaser's solicitors adjudged bankrupt and unable to pay out deposit — Whether deposit recoverable from purchaser*

The plaintiffs agreed to sell and the defendant agreed to purchase a flat under an agreement for sale. It was a term of the agreement that 10% of the balance of the purchase price, on completion of the sale and purchase of the flat, shall be paid to the purchaser's solicitors as stakeholders, and of this 10%, 5% shall be paid to the vendor within seven days of the receipt by the purchaser or his solicitors of the certificate of fitness for occupation. In this action, the plaintiffs claim the 5% of the purchase price which was not paid by the purchaser's former solicitors, whose sole proprietor was adjudged bankrupt. The issue before the court was whether the vendor (plaintiffs) was entitled to claim the unpaid deposit sum from the purchaser (defendant).

**Held,** dismissing the claim:
The loss must fall on the plaintiffs. By cl 3(1)(i), they had agreed that the payment of the 5% in question be made over to the solicitors as stakeholders. As stakeholders, those solicitors had become trustees for both the plaintiffs and defendant. The defendant had duly paid the last 5% of the purchase price in accordance with the terms of the agreement. He is no longer obliged to perform any other part of the agreement. The plaintiffs have recourse only against their trustees, the solicitors.

[*Editorial Note:* The plaintiffs have appealed to the Court of Appeal vide Civil Appeal No 120 of 1990.]

**Cases referred to**
1 *Skinner* v *Trustee of Property of Reed* [1967] 2 All ER 1286 (folld)
2 *Burt* v *Claude Cousins & Co Ltd* [1971] 2 QB 426 (folld)
3 *Sorrell* v *Finch* [1977] AC 728 (folld)

*S Rai* for the plaintiffs.
*Chan Eng Thai* for the defendant.

*Cur Adv Vult*

**Lai Kew Chai J:** This originating summons is concerned with the question as to the rights and liabilities of a developer/vendor and a purchaser of a residential property (who sold and purchased under the prescribed agreement for sale) in connection with the deposit of 5% of the purchase price paid over to the purchaser's solicitor who, by reason of bankruptcy, had become unable to pay out the 5% deposit to the vendor when due. In these proceedings the plaintiffs are claiming to be entitled to the sum of $73,557.07 being the sum due from the defendant, which sum represented 5% of the purchase price held by the defendant's former solicitors

as stakeholders and interest thereon at the agreed rate calculated from 29 September 1988 until payment.

The dispute has arisen under the following circumstances. By an agreement for sale in the prescribed form and dated 1 July 1983 the plaintiffs agreed to sell and the defendant agreed to purchase at the price of $1.55m a flat later known as #06-01, Honolulu Tower (hereinafter referred to as 'the flat') which was erected or to be erected in a building project known as 'Honolulu Tower'. The purchase price was agreed to be paid 'by the instalment and at the times' set out in cl 3 of the agreement.

By cl 3(1)(i) of the agreement, it was agreed that, on completion of the sale and purchase of the flat, the balance of thirty (30) per cent of the purchase price shall be paid, as to twenty (20) per cent of the purchase price forthwith to the plaintiffs, and 'the remaining ten (10) per cent shall be paid to the purchaser's solicitors as stakeholders, five (5) per cent of which shall be paid to the vendor within seven (7) days of the receipt by the purchaser or his solicitors of the certificate of fitness for occupation issued by the assistant director in respect of the housing unit or a photographic copy thereof duly certified as a true copy by the vendor's solicitors and the remaining five (5) per cent or any balance thereof (after any deduction has been made in accordance with cl 19 hereof) to be paid to the vendor on the expiry of six (6) months after the delivery of vacant possession to the purchaser or the date of the issue of the certificate of fitness for occupation, whichever is earlier.' Clause 19 relates to any defects in the flat which, in the circumstances there mentioned, may be made good by and at the costs of the purchaser who 'may deduct such costs from any sum which has been held by the purchaser's solicitors as stakeholders for the vendor'.

The completion of the sale and purchase of the flat took place in November 1985. Accordingly, the 5% of the purchase price last mentioned in cl 3(1)(i) was received by the plaintiffs.

What was not received by the plaintiffs is the 5% of the purchase price first mentioned in clause 3(1)(i). It was not paid over by the defendant's solicitors as stakeholders in the following circumstances. On 6 September 1988, the certificate of fitness for occupation relating to the flat was issued by the deputy controller. On 15 September 1988, the plaintiffs' solicitors served a copy of the certificate of fitness for occupation on the defendant's solicitors and demanded payment of the 5% purchase price. The purchaser's former solicitors did not and have not paid the 5% of the purchase price held by them as stakeholders to the plaintiffs. The sole proprietor of the defendant's former solicitors was adjudged a bankrupt on 14 April 1989 in Bankruptcy No 2578 of 1988. It appears that it is unlikely that the deposit is recoverable.

Since the plaintiffs did not receive full payment of the purchase price, they filed a caveat forbidding the registration of any instrument affecting the flat. On 9 March 1989 the defendant agreed to sell the flat to a third party at the price of $1.3m. That sale was completed and the defendant's transfer of the flat was effected in favour of the third party after an agreement was reached between the plaintiffs and the defendant. It was agreed that the defendant would provide an additional sum equivalent to the 5% of his purchase price of the flat and the interest lost and that sum was to be held in the joint names of the solicitors of both parties to these proceedings to abide by their outcome.

In my view, the loss must fall on the plaintiffs. By cl 3(1)(i) of the agreement, they had agreed that the payment of the 5% in question be made over to the solicitors as stakeholders. It is well settled that as stakeholders, those solicitors had become trustees for both the plaintiffs and defendant: see *Skinner* v *Trustee of Property of Reed*[1] at p 1289, and affirmed by Lord Denning in *Burt* v *Claude Cousins & Co Ltd*[2] which was, in turn, approved by the House of Lords in *Sorrell* v *Finch*.[3] The defendant had duly paid the last 5% of the purchase price in accordance with the terms of the agreement. He is no longer obliged to perform any other part of the agreement. The plaintiffs have recourse only against their trustees, the solicitors. The question of the prospects of recovery is a separate matter.

Accordingly, the application is dismissed with costs.

*Application dismissed.*

Solicitors: *Hin Rai & Tan; David Ong & Lim.*

Reported by *Zarinah Marican*